REMARKS/ARGUMENTS

Reconsideration of this Application and entry of this Amendment after Final are respectfully requested.

By the foregoing amendment, independent claim 8 and dependent claim 18 have been amended for the sole purpose of clarifying the claimed invention. Support for these amendments is found in the specification, including the examples described on pages 41-42. This proposed amendment places the claims in better form for appeal. Additionally, this amendment addresses items brought up by the examiner in the final office action and clearly renders moot certain grounds for rejection stated in the final Office Action. Accordingly, it is requested that these amendments be entered and that a notice of allowance be issued.

Obviousness Type Double Patenting Rejection

In the final Office Action, claims 8-20 were rejected on grounds of obviousness type double patenting over claims 1-2 of United States Patent No. 5,830,224. Without agreeing that the instant claims are obvious over claims 1-2 of United States Patent No. 5,830,224 and for expediency only, Applicant is submitting herewith a duly executed Terminal Disclaimer overcoming this obviousness type double patenting rejection. Entry of this Terminal Disclaimer and withdrawal of the obviousness type double patenting rejection is respectfully requested.

35 U.S.C. §102(b) Rejection

In the final Office Action, claims 8-20 were also rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5,353,807 (DeMarco). However, as amended, independent claim 8 makes it clear that the catheter system provided in Step A includes first and second catheters positionable in an artery and vein respectively, wherein at least one of which has a sliding perforation member that moves axially to perforate the artery and vein at adjacent locations thereby creating a fistula between the artery and vein. Furthermore, Step E of claim 8 recites that the perforation member is caused to move axially to form a perforation the artery and vein at adjacent locations to thereby create a fistula between the

artery and vein. DeMarco does not disclose or even remotely suggest any two catheter system having a sliding perforation member that moves axially to perforate the artery and vein at adjacent locations to create a fistula between the artery and vein.

What DeMarco does describe is a magnetically guidable intubation device that includes a magnetically guidable member is connected with a device for performing a "medical procedure" within the body. The magnetically guidable intubation device is effective to be introduced into a patient's body and magnetically guided within the body by an externally applied magnetic field. A flexible retrieving member may be fixedly attached to the magnetically guidable member and is used for retrieving the magnetically guided member from the body. An external magnetic field is applied and is effective to guide the magnetically guidable member within the body to perform the medical procedure. The magnetically guidable member may include a core and a conductive winding wound around the core. A remotely controllable current source may be provided for applying an electric current to the winding which is effective to induce a magnetic field around the magnetically guidable member. Thus, by changing the field strength and polarity of the magnetic field around the magnetically guidable member, precise control of the magnetically guidable member can be realized.

Thus the DeMarco device does not include first and second catheters insertable into an artery and vein respectively. Moreover, DeMarco does not describe or even remotely suggest any embodiment wherein his "performing means" is a sliding perforation member that moves axially as required by Applicant's claims.

In an embodiment of the magnetically guidable intubation device 10, the magnetically guidable member 14 is configured and dimensioned for insertion through the rectum of a human patient so that the performing means 12 are effective for performing a medical procedure within the large intestine. Also, the flexible retrieving member 16 may include at least one externally accessible duct 18 in communication with the performing means 12. The performing means 12 may include at least one of a substance delivering means for delivering a substance to the interior of the body (such as air duct 18 or water duct 18), therapeutic means for preforming a therapeutic medical procedure in the interior of the body (such as a

cleaning brush, papollotome, basket, polypectomy snare, forceps, injection needle, catheter, electrode(s), biopsy device, diathermic devices, alligator jaws, scraper, laser, knife or the like). Because of, for example, the looping experienced using conventional devices, poor positioning for therapeutic procedures is often a problem. The present invention provides more precise positioning for biopsy, imaging, polypectomy and other procedures.

Accordingly, all claims are clearly distinguishable over DeMarco as well as all other prior art of record.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-5484.

Respectfully submitted,

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